IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 698 of 2003
in
SPECIAL CIVIL APPLICATION No 458 of 2001
with
CIVIL APPLICATION No 8484 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNION OF INDIA
Versus
SARALA DHRUVAKUMAR SHUKLA

Appearance:
1. LETTERS PATENT APPEAL No. 698 of 2003
MR BIPIN I MEHTA for Appellant
..... for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 11/07/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

This is an appeal against the judgment and order dated 5.7.2001 passed by the learned Single Judge allowing Special Civil Application No. 458 of 2001 challenging the decision of the appellants herein, i.e. Post Master General, Ahmedabad and Sub-Post Master, LG Hospital Road Post Office, Maninagar, Ahmedabad under the provisions of the Post Office Savings Account Rules, 1981 (hereinafter referred to as "the Rules"). The learned Single Judge held that the appellants were estopped from treating the account as a single holder account upon the death of the husband of the first petitioner.

2. The first respondent herein-original first petitioner and her late husband jointly invested Rs.2,04,000/- in the post office monthly income scheme on 15.11.1994. The second respondent herein - original second petitioner was shown as their nominee. When the husband of the first petitioner expired on 27.7.1995, an application was made by the first petitioner to substitute the name of the second petitioner vice his father - late husband of the first petitioner, as a joint holder with the first petitioner. Such application came to be granted by the appellants and the name of the second petitioner was shown as a joint holder alongwith the first petitioner. Accordingly, both the petitioners were shown as joint depositors and the investment became joint investment of both the petitioners. Somewhere thereafter in the year 1997, the petitioners further invested a sum of Rs.2,04,000/- in the said monthly income scheme account, as the upper limit for joint investment under the monthly income scheme was available upto Rs.4,08,000/-. The said deposit was also accepted and accordingly the petitioners' monthly income scheme amount in their joint names was having a total amount of Rs.4,08,000/-. The appellants continued to pay the petitioners monthly interest by crediting the same in their account for a period of three years. When the investment originally made by the first petitioner and her late husband on 15.11.1994 was due to mature on 15.11.2000, the second appellant through his letter dated 1.11.2000 raised an objection that when the husband of the first petitioner expired, the monthly income scheme account became a single holder account of the surviving depositor, i.e. of the first petitioner and, therefore, the joint monthly income scheme account of the first petitioner and her husband became a single holder account and, therefore, second monthly income scheme account No. 375386 was opened in contravention of Rule 4 of the

Rules. The second appellant accordingly asked the first petitioner to close the account and obtain the amount lying at her credit. The petitioners objected to the said decision and made a representation. Since the appellants did not accept the said representation, the petitioners moved this Court by filing Special Civil Application No. 458 of 2001 which came to be allowed by the judgment under appeal. That is why this Letters Patent Appeal.

3. We have heard Mr Bipin I Mehta, learned counsel for the appellants. The learned counsel submits that by virtue of operation of Note 4 below Rule 4, the joint account of the first petitioner and her late husband (opened on 15.11.1994) became a single holder account of the first petitioner upon the death of her husband on 27.7.1995. It is, therefore, submitted that the appellants were justified in taking the impugned decision to treat the account in question as a single holder account.

4. Rule 4 of the Post Office (Monthly Income Account) Rules, 1987 reads as under :-

> "4. Opening of account :- A depositor may operate more than one account under these rules subject to the condition that deposits in all accounts taken together shall not exceed rupees two lakhs and four thousand in single account and rupees four lakhs and eight thousand in joint account.
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> [MOF (DEA) Notification No. G.S.R. 390(3) DATED 29.4.1993 effective from 1.6.1993]"
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> [By notification dated 1.2.2000, the upper limits are raised to Rs. 3 lakhs in single account and Rs.6 lakhs in joint account w.e.f. 1.2.2000]

Rule 3 of the Post Office (Monthly Income Account) Rules, 1987 reads as under :-

> "3. Application of the Post Office Savings Bank General Rules, 1981 and the Post Office Savings Account Rules, 1981 :- The provisions of the Post Office Savings Bank General Rules, 1981 and the Post Office Savings Account Rules, 1981, so far may be, apply in relation to matters for which no provision has been made in these rules."

Mr Mehta states that the note below Rule 4 of the

Post Office Savings Account Rules, 1981 provides that "if one of the depositors dies in a joint account, the joint account shall, as from the date of death of the said depositor, be deemed to be a single account in the name of the surviving depositor".

It is, therefore, submitted by Mr Mehta that as clarified in the MOF (DEA) letter No. 2/23/87-NS.II dated 12.12.1988 and DG Posts letter No. 97-8/88-SB dated 12.1.1989, if one of the depositors of an MIS account dies, the account will be treated as a single account in the name of the surviving depositor from the date of death of the said depositor and when a report to this effect is received in the post office, the Postmaster will ask the surviving depositor to withdraw the excess amount in excess of the limit prescribed for a single depositor as this amount will not carry interest from the date of death of the joint depositor. The interest already paid on this excess amount will be recovered or adjusted.

5. Having heard the learned counsel for the appellants, we are of the view that all that the aforesaid note 4 below Rule 4 of the 1981 Rules provides is that when there is a joint account of two depositors and one of them expires, the ordinary consequence would be that the account would become a single depositor account, that is, it will be deemed to be a single account in the name of the surviving depositor. The question is whether the above note will apply even where the heir or the nominee of the deceased depositor comes forward for getting his or her name substituted for the name of the deceased depositor in the joint account.

The Rules do not prohibit any such succession taking place in accordance with the relevant law regarding succession of property upon the death of one of the depositors. The general principle of law that when there are two owners of a property jointly owning such property, they are presumed to be tenants in common and each has a definite though undivided share in the property, would apply in the case of a joint account under the monthly income scheme Rules also. As far as immoveable property is concerned, Section 45 of the Transfer of Property Act, 1882 provides that in the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

A joint tenancy connotes unity of title, possession, interest and commencement of title; in a tenancy in common, there may be unity of possession and commencement of title, but the other two features would be absent.

The rule of English law is to presume that a transfer to a plurality of persons creates a joint tenancy with a right of survivorship, unless there are words of severance. This principle is adopted in Section 106 of the Indian Succession Act, 1952, replacing Section 93 of the Indian Succession Act, 1865; and a joint tenancy has been recognized in a gift by will of an Indian Christian, Parsee, and Muslim.

The Hindu rule is the opposite. In Jogeswar Narain vs Ram Chand Dutt, 23 IA 37, 44; Bahu Rani vs Rajendra Baksh Singh, (1933) 60 IA 95, 101, the Privy Council said -

> "The principle of joint tenancy appears to be unknown to Hindu law, except in case of coparcenary between members of an undivided family."

This has been approved by the Supreme Court in Venkatakrishna vs. Satyavathi, AIR 1968 SC 751. Even if the grantees are members of a coparcenary they will take as tenants in common, unless a contrary intention appears from the grant. It is held that in India the Court must always lean against holding a bequest or a grant to be a joint bequest or grant, and the presumption must always be in favour of a tenancy in common (Mahamed Jusali vs. Fatimabai (1948) Bom 53, 49 Bom LR 505, AIR 1949 Bom 33 [vide Mulla's Transfer of Property Act, 9th Ed. Page 340].

In any view of the matter, since Rule 4 stipulated at the relevant time the upper limit of Rs.2,04,000/- for a single account and Rs.4,08,000/- for a joint account, there was no breach of the said substantive part of Rule 4 because the amount in the joint account did not exceed Rs.4,08,000/-. It is also required to be noted that it is not the case of the respondent authorities that petitioner No.2 had any other MIS account in his name before he became a joint holder with his mother upon the death of his father in 1995.

6. In view of the above interpretation of the Rules and also in view of the fact that upon the death of the husband of petitioner No. 1 in the year 1995, the

appellants permitted the second petitioner, who was a nominee, to be substituted for his deceased father (who was husband of the first petitioner) in the aforesaid joint monthly income scheme account, the Postal Department was rightly estopped from taking the view that continuation of the joint monthly income scheme account in the names of the first petitioner and the second petitioner was contrary to the aforesaid Rules.

7. For the reasons aforesaid, we see no merit in this appeal. The appeal is accordingly dismissed.

8. In view of the dismissal of the main appeal, the Civil Application for stay does not survive and is accordingly dismissed.

(KSHITIJ R. VYAS, J.)

(M.S. SHAH, J.)
sundar/-